

Remarks

A restriction requirement has been imposed on the Applicants under 35 U.S.C. 121, in accordance with which the Applicants are required to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable. The Examiner states that, currently, none of the claims are generic.

The Examiner further states that the application contains claims directed to the following patentably distinct species of the claimed invention: Species 1, shown in figure 3; Species 2, shown in figures 4-8, Species 3, shown in figures 9-10; and, Species 4, shown in figures 11-18.

The Applicants hereby elect Species 4 shown in figures 11-18 with traverse on the grounds that: 1) a *prima facie* case for restricting the claims of the application has not been established; and, 2) the claims do not meet the general test as to when claims are restricted. Furthermore, the Applicants contend that all claims are readable on the elected species.

In regard to the first ground for traverse, ". . . the examiner, in order to establish reasons for insisting upon restriction, must show by appropriate explanation one of the following: (A) Separate classification thereof . . . (B) A separate status in the art when they are classifiable together . . . (C) A different field of search" (MPEP 808.02.)

Upon careful review of the Office action, the Applicants find no such explanation as required, and therefore contend that a *prima facie* case for requiring a restriction of the claims has not been established.

In regard to the second ground for traverse, "[c]laims to be restricted must be mutually exclusive." (MPEP 806.04(f).) Stated otherwise, ". . . claims to be restricted to different species must recite the mutually exclusive characteristics of such species." (Id.)

The Applicants contend that none of the claims are mutually exclusive. Therefore, the Applicants contend that the claims do not meet the general test as to when claims may be properly restricted.

Moreover, "[w]here the claims of an application define the same essential characteristics of a single disclosed embodiment of an invention, restriction therebetween should never be required." (MPEP 806.03).

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1 The Applicants contend that all of the claims define the same essential
2 characteristics of a single disclosed embodiment of the invention as shown in figures
3 11-18, and thus, all claims are readable on the elected species.

4 Lastly, in regard to "... passing upon questions of ... restriction, it is the claimed
5 subject matter that is considered and such claimed subject matter must be compared ...
6 ..." (MPEP 806.01.)

7 It appears to the Applicants that the imposition of the restriction requirement has
8 been based not on the claimed subject matter, but only on the subject matter disclosed
9 in the figures alone. Thus, the Applicants contend that the restriction requirement does
10 not have proper basis.

11 Accordingly, for the reasons set forth above, the Applicants respectfully contend
12 that the restriction requirement has not been properly established, and therefore
13 respectfully request that the restriction requirement be withdrawn.

Summary


14 The Applicant believes that this response constitutes a full and complete reply to
15 the Office action, and the Applicant furthermore requests timely allowance of claims 1-8,
16 10-16, and 21-22. The below-signed attorney respectfully requests that, in the event
17 that the next Office action is anything other than a Notice of Allowance for claims 1-8,
18 10-16, and 21-22, the Examiner call him before issuing the action.

19 Respectfully submitted,

20 Thom Ives, Darrel Poulter, and Andy Petersen

21 Date: June 07, 2004

22 By



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